Compliance with SAMHSA under House Bill 563

While SAMHSA specifies in the preamble to the rules that the *only* law a state must have to be in compliance is a minimum sales-age law of 18 years (61 Fed. Reg. 1495-96), there are a number of steps that Idaho can take to further demonstrate efforts to reach SAMHSA's compliance targets. The SAMHSA rules also require the state to conduct random, uannounced inspections and to designate an agency responsible for reporting compliance efforts to SAMHSA.

Mandatory SAMHSA Requirements

Current Idaho law prohibits the sale and distribution of tobacco products to minors and imposes financial penalties for violation of this section. (ID Code Sec. 18-1502A). It also prohibits minors from purchasing tobacco products and imposes fines for violations. (ID Code Sec. 18-1502B).

The bill assigns the responsibility for reporting to HHS on the SAMHSA requirements to the Director of the state Dept of Law Enforcement. The Director, with the assistance of local law enforcement, must conduct random, unannounced inspections at locations where tobacco products are sold or distributed. The Director or a law enforcement agency is allowed to enlist persons under the age of eighteen (18) to test compliance.

Additional Methods of Enforcement

Current Law--Retail Tobacco License and Vending Restrictions

Current Idaho law requires retail tobacco dealers to have a license issued by the State Tax Commission at an annual fee of $25. (ID Code Sec. 63-2502, 63-2503, 63-2512). This requirement provides a comprehensive list of locations where tobacco products are sold, which facilitates the development of a model for SAMHSA's required random, unannounced inspections. Although the SAMHSA comments issued with the rules do not endorse or reject licensing, they do state that "a licensing system offers States an efficient method of identifying the total population of outlets for inspections and enforcement and that licensure fees can be a source of funds to pay for enforcement activities." (61 Fed. Reg. 1496).

Idaho law currently restricts the location of tobacco vending machines to places that are inaccessible to minors. (ID Code Sec. 18-1503).

Proposed Bill--Single Cigarettes

The proposed bill continues efforts to reduce underage purchases of tobacco products by prohibiting the sale of tobacco products outside of the manufacturer's original packaging, e.g. banning the sale of single cigarettes.

Proposed Bill--Statewide Uniformity

SAMHSA specifies in the preamble that its rules "neither prohibit the states from preempting, nor requires them to preempt local initiatives on youth access to tobacco products." 61 Fed. Reg. 1496. It should be noted that Idaho House Bill 563 provides for equitable and uniform enforcement of state laws regarding the use, sale, marketing, display, and distribution of tobacco products.

Statewide uniformity is both good public policy and good business policy. Without uniformity, some localities may take no action to uphold state law, while others may take action that goes beyond what can be justified. Uniformity guarantees that the same basic rules determining what is lawful and what is unlawful will apply equally from community to community.

Clearly, without uniformity, businesses with multiple locations could face the regulatory burden of having to comply with different, and perhaps conflicting local ordinances. Further, because national and regional retail chains operate in Idaho, lack of a uniform state law would needlessly complicate -- and ultimately undermine -- the ability to train employees as the laws would vary from community to community.

Conclusion

These requirements, as outlined in Idaho's House Bill 563 on tobacco sales, combined with the limitations contained in current Idaho law would be an effective deterrent to underage sales. In addition, if enacted, they would go a long way in helping the state demonstrate its ability to comply with the requirements under the SAMHSA rule.

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